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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF JUNE, 1998

B E F O R E

THE HON'BLE MR. JUSTICE TIRATH S. THAKUR

WRIT PETITION NO.8162/1992

BETWEEN:

M/s. Karnataka Minerals &
Manufacturing Company Ltd.,
A Public Limited Company,
registered under the "Companies
Act, 1956 having its registered
office at 5-A, 9th Main,
Rajamahal Vilas,
Bangalore - 560 080 rep. herein
by Sri.M.N.Chandrushekar,
Company Manager.

: PETITIONER.

(By Sri.B.R. Vishwanath, Adv.)

AND:

1. The Assistant Commissioner
for Commercial Taxes,
ASSTS - 2 (Bangalore Dn.,
Bangalore) Srinivasa Complex,
Seshadripuram, Bangalore - 20.

2. The Tahsildar,
PUC and other recoveries,
Dn. 3, Krishibhavan,
Bangalore - 2. : RESPONDENTS.

(By Sri.K.M. Shivayogiswamy, HCGP)

This writ petition filed under Arts.226 and
227 of the Constitution praying to quash the
notice dt.23.1.92 vide annex-C; grant stay etc.

This petition coming on for hearing this
day, the Court made the following:

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ORDER

The petitioner has in this petition prayed for a writ of certiorari calling in question the validity of the recovery proceedings initiated against him pursuant to the notice issued by the 2nd respondent. From the averment made in the writ petition, it appears that a sum of Rs54,305/- towards arrears of sales tax were due from the petitioner which was demanded by the Assistant Commissioner for Commercial Taxes in terms of a notice dated 4.1.92. On receipt of the demand notice from the authorities, the petitioner company appears to have pointed out that it was a sick industrial unit having been declared so by the Board of Industrial and Financial Reconstruction(BIFR). It was further pointed out that as the Board was finalising a scheme for the rehabilitation of the company in terms of Sec.22 of the Sick Industrial Companies (Special Provisions) Act, 1985, no recovery proceedings could be initiated or continued against the petitioner by distress or sale of its property.

2. Having evoked no worthwhile response from the respondents, who appear to have continued

with the recovery proceedings, the petitioner has filed the present writ petition challenging the same as noticed earlier.

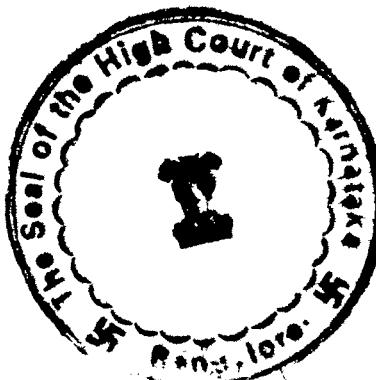
3. No one has appeared today in support of the writ petition. Mr. Shivayogi Swamy, Govt. Pleader appearing for the respondent has drawn my attention to the order passed by the BIFR and produced as Annex-B to the writ petition in which the following paragraph deals with the recovery of the sales tax dues from the company:

" Shri.N. Sriraman, Joint Director, Govt. of Karnataka, submitted that Govt. of Karnataka has already given its consent in writing to grant exemption to the extent of 50% of the Sales Tax payable over a period of 5 years and to defer 50% sales tax payable on interest free basis for a period of 5 years to be repaid in the following 5 years and to reduce the power cuts as per Govt. policy for sick units. "

4. It was urged by Mr. Swamy that the period of 5 years for purposes of exemption as also deferment reckoned from the date of the approval of the scheme by the BIFR has since expired

thereby entitling the respondents to initiate proceedings for recovery of the outstanding amount if the same has not already been paid. There is in my opinion substance in that submission. The scheme framed by the Board envisaged deferment of 50% of the sales tax dues payable by the petitioner on an interest free basis for a period of 5 years. The said period has admittedly expired so that the payment of the amount deferred under the scheme can be said to have fallen due. In the event of the failure of the petitioner company to make the payment the scheme does not forbid taking of appropriate proceedings for recovery of the unpaid amount. In the circumstances, therefore, the question whether the proceedings initiated by the respondents were justified is rendered academic in the light of the subsequent development referred to above. The writ petition is accordingly disposed of reserving liberty for the respondents to initiate fresh proceedings if so advised for recovery of the amount that remains unpaid as per the terms of the scheme framed by the BIFR. No costs.

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Sd/-
JUDGE